

REQUEST FOR COUNCIL ACTION



Date Action Requested: June 5, 2023

Order <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Information <input type="checkbox"/>	
No. 2023-2916	
Subject: An Ordinance amending provisions regarding early issuance of building permits upon substantial completion of public improvements including Newberg Municipal Code, Title 15 Development Code, 15.05.030, 15.235, 15.235.080, 15.240.040, and 15.505.020	Staff: Clay Downing, Planning Manager Department: Community Development File No. DCA21-0003
Business Session	Order On Agenda: Public Hearing
Hearing Type: Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Administrative <input type="checkbox"/> Not Applicable <input type="checkbox"/>	

Is this item state mandated? Yes No

If yes, please cite the state house bill or order that necessitated this action:

Oregon House Bill 2306 (2019), codified in ORS 455.175.

Recommendation:

Adopt Ordinance No. 2023-2916.

Executive Summary:

A. SUMMARY

On July 21, 2021, the Newberg City Council adopted Resolution No. 2021-3755 initiating an amendment to the Newberg Municipal Code (NMC) Title 15 Development Code, 15.050 Definition and 15.235 Land Divisions. The proposed amendment does the following:

1. Updates the Newberg Municipal Code (NMC) Title 15. Development Code definition related to “substantial completion” for consistency with existing Oregon state law.
2. Updates NMC Title 15 Development Code text to create consistency with amendments to state law resulting from Oregon’s HB 2306 (2019).

B. BACKGROUND

The Oregon Legislature adopted HB 2306 during the 2019 legislative session. The bill was codified in ORS 455.175 which requires cities and counties to issue residential building permits upon the substantial completion of public improvements in residential subdivisions. The changes created by adoption of HB 2306 (2019) differ from traditional building permit issuance, which

typically requires developers to install all public improvements and record the subject property's plat before building permits are issued.

ORS 455.174 defines "substantial completion" as the completion of:

- water supply system;
- fire hydrant system;
- sewage disposal system;
- storm water drainage system, excepting any landscaping requirements that are part of the system; curbs;
- demarcating of street signs acceptable for emergency responders; and
- roads necessary for access by emergency vehicles.

The NMC, Sec. 15.05.030, currently states that:

"Substantially complete" means when, in the opinion of the city engineer, the city will not be adversely impacted by issuance of building permits prior to acceptance of the public improvements. "Substantially complete" includes, but is not limited to, a determination that water and wastewater lines have been tested and ready to begin service, that as-built drawings of public facilities have been submitted, that the roadway surfaces and drainage facilities will provide year-round access to each lot and that street lights are installed and authorized to be energized.

The NMC's current definition is inconsistent with ORS 455.175 and needs to be updated in order to achieve consistency with state law.

On July 19, 2021, the Newberg City Council adopted Resolution No. 2021-3755 which directed staff to initiate an amendment to NMC, Title 15 Development, related to HB 2306 (2019).

C. PROCESS

A development code amendment is a Type IV application and follows the procedures in Newberg Development Code 15.100.060. The Planning Commission will hold a legislative hearing on the application. The Commission will make a recommendation to the Newberg City Council. Following the Planning Commission's recommendation, the Newberg City Council will hold a legislative hearing to consider the matter. Important dates related to this application are as follows:

1. 7/19/2021: The Newberg City Council adopted Resolution 2021-3755, initiating the Development Code amendment.
2. 2/2/2023: The Community Development Director deemed the application complete.
3. 3/23/2023: Planning staff posted notice in four public places and placed notice on Newberg's website.
4. 3/30/2023: The Newberg Graphic published notice of the Planning Commission hearing.

5. 4/23/2023: The Planning Commission will hold a legislative hearing to consider the application.
6. 5/15/2023: The Newberg City Council received an informational presentation on the proposed Development Code amendment during a public work session.
7. 5/24/2023: Planning staff placed notice on the City of Newberg's website and posted notice in four public buildings. The Newberg Graphic published notice of the City Council hearing.
8. 6/5/23/2023: After property notice, the City Council held a legislative hearing to consider the item.

D. STAFF/AGENCY COMMENTS

The application was routed to several public agencies for review and comment. Comments and recommendations from city departments have been incorporated into the findings and conditions. As of the writing of this report, the city received the following agency comments:

- a. Building Official: Reviewed, no conflict.
- b. City Manager: Reviewed, no conflict.
- c. Community Development Director: Reviewed, no conflict.
- d. Finance Department: Reviewed, no conflict.
- e. Police Department: Reviewed, no conflict.
- f. Public Works, Director: Reviewed, no conflict.
- g. Public Works, Maintenance Superintendent: Reviewed, no conflict.
- h. Public Works, Waste Superintendent: Reviewed, no conflict.
- i. Public Works, Regulatory Compliance: Reviewed, no conflict.
- j. Public Works, Water Superintendent: Reviewed, no conflict.
- k. Public Works, Senior Engineer: Reviewed, no conflict.
- l. Waste Management: Reviewed, no conflict.
- m. Yamhill County Transit: Reviewed, no conflict.
- n. Ziplly Fiber: Reviewed, no conflict.

The responses received from staff and other agencies are provided in Attachment 2.

E. PUBLIC COMMENTS

As of the writing of this report, the City has received one public comment on this item. The public comment is included in Attachment 3

F. DISCUSSION

The adoption of HB 2306 (2019) creates a permitting pathway that differs from traditional building permit issuance, which typically requires developers to install all public improvements and record

the project's plat before building permits are issued. The full text for HB 2306 is included in this staff report as Attachment 4.

If the Newberg City Council chooses to adopt the proposed Development Code text amendments, developers will have the opportunity to choose from:

- Path 1 (Early Issuance of Building Permits): Issuance of building permits prior to a recorded plat based on substantial completion of a project's public improvements. For individuals who choose to pursue use of Path 1, the owner will be required to provide a security at 120% of the estimated cost of improvements not yet completed.
- Path 2 (Traditional Issuance of Building Permits): Issuance of building permits following completion of all public improvements and recordation of plat.

Planning staff evaluated NMC sections to identify text amendments that will bring the NMC into compliance with ORS 455.175 while maintaining relatively simple language for applicants to consider when choosing how to form, submit, and advance their projects. Exhibit A is provided in legislative format and proposes the following amendments:

- Chapter 15.05 General Provisions, Section 15.05.030. Definitions: Update the existing definition of "substantially complete" to comply with ORS 455.175 and expand the definition to clarify the city engineer's role in determining the adequacy of a project's public improvements.
- Chapter 15.235 Land Divisions, Section 15.235.060. Early issuance of residential building permits: Create a new section within the *Land Divisions* chapter which establishes when, to which projects, and under which criteria early issuance of building permits may occur.
- Chapter 15.235 Land Divisions, Section 15.235.080. Filing and recording: Revise section to create an internal reference to new code section 15.235.060.
- Chapter 15.240 PD Planned Unit Development Regulations, Section 15.240.040. Final plan consideration – Step two: Create a new sub-section which establishes criteria under which certain Planned Unit Developments, those containing both residential and commercial units where 60% or more of the project is residential, may seek early issuance of building permits based on substantial completion of public improvements.
- Chapter 15.505 Public Improvement Standards, Section 15.505.020. Applicability: Revise a sub-section related to the requirement for City approval of public improvements that allows for approval pursuant to substantial completion and creates an internal reference to new code section 15.235.060.

G. PLANNING COMMISSION RECOMMENDATION

On April 13, 2023, the Newberg Planning Commission considered a staff report, received public testimony, considered findings, and deliberated on the proposed Development Code amendment. The Planning Commission adopted Planning Commission Resolution 2023-385 which recommend that the City Council adopted the proposed Development Code amendments.

Planning Commission Resolution 2023-385 is included as Attachment 5.

Fiscal Impact

No fiscal impact is anticipated with the proposed Development Code amendment outside of the staff time allocated to process this City Council’s request for this amendment.

Council Goals:

The proposed Development Code amendment is related to Goal 1 of the City Council’s 2023 Goals. The proposed Development Code amendment aligns with the following Goals and Objectives:

Goal 1. Create and maintain a high level of customer service

Objective 2. Streamline the process for issuing building permits.

The proposed amendment will create a new, optional permitting pathway for residential development that will allow developers to opt into early issuance of building permits upon substantial completion of public improvements.

ATTACHMENTS:

Ordinance No. 2023-2916

Exhibit “A”: Development Code Amendments

Exhibit “B”: Findings

1. City Council Resolution No. 2021-3755
2. Staff/Agency Comments
3. Public Comments
4. Full Text for House Bill 2306 (2019)
5. Planning Commission Resolution No. 2023-385



ORDINANCE NO. 2023-2916

An Ordinance Amending Provisions Regarding Early Issuance of Building Permits Upon Substantial Completion of Public Improvements Including Newberg Municipal Code, Title 15 Development Code, 15.05.030, 15.235, 15.235.080, 15.240.040, and 15.505.020

Recitals:

1. The Oregon Legislature adopted HB 2306 during the 2019 legislative session. The bill was codified in ORS 455.175
2. The Newberg City Council adopted Resolution 2021-3755, which initiated amendments to the Newberg Development Code.
3. After proper notice, the Newberg Planning Commission opened a hearing on April 13, 2023, considered public testimony and deliberated. They found that the proposed amendments were in the best interests of the City and adopted Resolution No. 2023-385.
4. After proper notice, the Newberg City Council opened a hearing on June 5, 2023, considered public testimony and deliberated. They found the proposed amendments were in the best interest of the City.

The City of Newberg Ordains as Follows:

1. The Newberg Development Code is amended as shown in Exhibit “A”.
2. The adoption is based upon finding in Exhibit “B”.
3. Exhibits “A” and “B” are hereby adopted and by this reference incorporated.

Effective Date of this ordinance is 30 days after the adoption date, which is July 5, 2023.

Adopted by the City Council of Newberg, Oregon, this 5th day of June, 2023, by the following votes:

AYE: **NAY:** **ABSTAIN:**

Sue Ryan, City Recorder

Attest by the Mayor this 8th day of June, 2023.

Bill Rosacker, Mayor

Exhibit “A” to Ordinance No. 2023-2916

Development Code Amendment – File DCA21-0003

Note: Existing text is shown in regular font.
Added text is shown in double underline
Deleted text is shown in ~~striketrough~~.

Section 1. The definitions in Newberg Development Code Section 15.05.030 shall be amended as follows:

“Substantially complete” or “**substantial completion**” is defined as meaning that the city has inspected, tested and found acceptable under applicable code requirements, unless the parties agree to a lower standard:

- The water supply system;
- The fire hydrant system;
- The sewage disposal system;
- The storm water drainage system, excepting any landscaping requirements that are part of the system;
- The curbs;
- The demarcating of street signs acceptable for emergency responders; and
- The roads necessary for access by emergency vehicles.

~~means when, Further, the term is defined as meaning that~~ in the opinion of the city engineer, the city will not be adversely impacted by issuance of building permits prior to acceptance of the public improvements. This definition is and shall remain consistent with ORS 455.175 as amended. “**Substantially complete**” includes, but is not limited to, a determination that water and wastewater lines have been tested and ready to begin service, that as-built drawings of public facilities have been submitted, that the roadway surfaces and drainage facilities will provide year-round access to each lot and that street lights are installed and authorized to be energized.

Section 2. Section 15.235 shall be amended to add a new subsection as follows:

15.235.060 Early issuance of residential building permits.

A. Applicability. Limited to residential developments requiring a developer, declarant or owner to subdivide land, as defined in ORS 92.010, and to obtain a permit under ORS 215.416 or 227.175.

B. Early Issuance of Building Permits. Following approval of a preliminary plat and before recordation of a final plat, applicable projects may request early issuance of residential building permits pursuant to successful completion of all required criteria.

1. The project must reach substantial completion of the public improvements, pursuant to ORS 147.755 and as defined herein;

2. The owner must sign a Security and Improvement Agreement to provide for security and schedule of completion of final infrastructure improvements;

3. The owner must provide security at 120% of the estimated costs of the public improvements not yet completed; and

4. Regardless of early issuance of building permits, certificate of occupancy shall not be issued prior to completion of all public improvements.

Section 3. Section 15.235.080 shall be amended as follows:

A new lot is not a legal lot for purposes of ownership (title), sale, lease, or development/land use until a final plat is recorded for the subdivision or partition containing the lot. The final plat filing and recording requirements are as follows:

A. Filing Plat with County. Within 60 days of the city approval of the final plat, the applicant shall submit the final plat to Yamhill County for signatures of county officials as required by ORS Chapter 92.

B. Proof of Recording. Upon final recording with the county, the applicant shall submit to the city a paper copy of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots except where allowed pursuant to NMC 15.235.060.

C. Prerequisites to Recording the Plat.

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;

2. No plat shall be recorded until the county surveyor approves it in the manner provided by ORS Chapter 92. [Ord. 2813 § 1 (Exh. A § 7), 9-5-17.]

Section 4. Section 15.240.040 shall be amended as follows:

A. Application. An application, with the required fee, for final plan approval shall be submitted in accordance with the provisions of this code, and must be in compliance with all conditions imposed and schedules previously prescribed.

B. Referral. Referral of final plans and supportive material shall be provided to appropriate agencies and departments.

C. Decision Type I Procedure. The final plan consideration shall be reviewed through the Type I procedure. Upon receipt of the application and fee, final plans and required supportive material, the director shall approve, conditionally approve or deny the application for final plan approval. The decision of the director to approve or deny the application shall be based on written findings of compliance or noncompliance with approved preliminary plans and city standards, plans, policies and ordinances. Minor variations from approved preliminary plans may be permitted if consistent with the general character of the approved preliminary plans.

D. Conditions. Applications may be approved subject to such conditions as are necessary to fulfill the purpose and provisions of this code.

E. Performance Agreement.

1. Preparation and Signatures. A duly notarized performance agreement binding the applicant, and the applicant's successors in interest, assuring construction and performance in accordance with the approved final plans shall be prepared by the city and executed by the applicant and city prior to issuance of a building permit.
2. Return. Unless an executed copy of the agreement is returned to the director within 60 days of its delivery to the applicant, final plan approval shall expire, necessitating the reapplication for final plan reapproval.
3. Filing. The director shall file a memorandum of the performance agreement with the Yamhill County recorder.
4. Improvement Petitions and Dedications. Improvement petitions and all documents required with respect to dedications and easements shall be submitted prior to completion of the agreement.
5. Project Changes. The director may permit project changes subsequent to execution of the agreement upon finding the changes substantially conform to final approved plans and comply with city standards, plans, policies and ordinances. Other modifications are subject to reapplication at the appropriate step.
6. Compliance. Compliance with this section is a prerequisite to the issuance of a building permit. [Ord. 2822 § 1 (Exh. A), 2-5-18; Ord. 2451, 12-2-96. Code 2001 § 151.228.]

F. Early Issuance of Building Permits Based on Substantial Completion. A planned unit development containing residential and commercial units where 60% or more of the PUD is residential, may seek early issuance of building permits prior to recordation of a final plat for *substantial completion* of public improvements pursuant to NMC 15.235.060.

1. Regardless of early issuance of building permits, certificate of occupancy shall not be issued prior to completion of all public improvements.

Section 5. Section 15.505.020 shall be amended as follows:

The provision and utilization of public facilities and services within the City of Newberg shall apply to all land developments in accordance with this chapter. No development shall be approved unless the following improvements are provided for prior to occupancy or operation, unless future provision is assured in accordance with NMC 15.505.030(E).

A. Public Works Design and Construction Standards. The design and construction of all improvements within existing and proposed rights-of-way and easements, all improvements to be maintained by the city, and all improvements for which city approval is required shall comply with the requirements of the most recently adopted Newberg public works design and construction standards.

B. Street Improvements. All projects subject to a Type II design review, partition, or subdivision approval must construct street improvements necessary to serve the development.

C. Water. All developments, lots, and parcels within the City of Newberg shall be served by the municipal water system as specified in Chapter 13.15 NMC.

D. Wastewater. All developments, lots, and parcels within the City of Newberg shall be served by the municipal wastewater system as specified in Chapter 13.10 NMC.

E. Stormwater. All developments, lots, and parcels within the City of Newberg shall manage stormwater runoff as specified in Chapters 13.20 and 13.25 NMC.

F. Utility Easements. Utility easements shall be provided as necessary and required by the review body to provide needed facilities for present or future development of the area.

G. City Approval of Public Improvements Required. No building permit may be issued until all required public facility improvements:

1. are in place and approved by the director, or

2. are substantially complete pursuant to NMC 15.235.060 and otherwise bonded for in a manner approved by the review authority,

in conformance with the provisions of this code and the Newberg Public Works Design and Construction Standards. [Ord. 2810 § 2 (Exhs. B, C), 12-19-16.]

APPROVAL CRITERIA

A. STATEWIDE PLANNING GOALS

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

Finding: The City meets this requirement by having various citizen committees and/or commissions with opportunities for the public to testify on general or specific matters. The proposal appears before the Newberg Planning Commission on April 13, 2023, and is scheduled to appear before Newberg City Council on April 3, 2023, which provides the opportunity for public comment. Finally, public noticing was conducted pursuant to procedures found in NMC Chapter 15.100 (Article IV. Notice, Sections 15.100.200 – 15.100.270) including the publication in the Newberg Graphic newspaper and posted in four public places.

The proposed amendments are subject to the Type IV Legislative process, which requires public notification and public hearings before the Planning Commission and the City Council. This process has been established by the City and determined to be consistent with Goal I of the Oregon Statewide Planning Goals. The public hearing notice of the action and decision, and the hearings on this case before the Planning Commission and the City Council are all recognized as opportunities for citizen participation.

The Goal is met.

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Finding: This Goal requires that land use decisions 1) have an adequate factual base, 2) that alternatives have been considered, and 3) that implementation measures are consistent with and adequate to carry out comprehensive plan policies and designations.

The proposed amendments have an adequate factual base and is required by HB 2306 which was later codified in ORS 455.175. The alternatives to amending the Municipal Code text would be to: 1) deny the application and rely on an administrative programmatic approach that is inconsistent with either the local Municipal Code or state law. Further, the proposed amendments are consistent with and adequate to carry out comprehensive plan policies and designations as noted in these findings.

The Goal is met.

GOAL 3: AGRICULTURAL LANDS

To preserve and maintain agricultural lands.

Finding: Not applicable because the proposal does not propose any land use regulation changes to agricultural lands outside of the Newberg Urban Growth Boundary.

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Finding: Not applicable because the proposal does not propose any land use regulation changes to the Stream Corridor that protects wooded areas within the Newberg Urban Growth Boundary.

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces.

Finding: The proposed amendment will not negatively impact inventoried Goal 5 resources because the amendments do not change protections that already exist in the Newberg Municipal Code, Specific Plans and Master Plans to protect these resources. Newberg has an acknowledged Stream Corridor designation, inventoried historic resources, and identified open spaces in compliance with Goal 5.

This Goal is met.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of the air, water and land resources of the state.

Finding: Newberg has an acknowledged Comprehensive Plan that complies with this goal. Protections are already in place for air, water, and land resource quality. This proposal does not modify the existing goals and policies. Complying with HB 2306 (2019) does not negatively impact Goal 6.

This Goal is met.

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards.

Finding: Newberg has an acknowledged Comprehensive Plan that complies with this goal. This proposal does not modify the City's natural hazards requirements such as flood plain or landslide areas. This proposal does not modify the existing goals and policies.

This Goal is met.

GOAL 8: RECREATIONAL NEEDS

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Finding: Newberg has an acknowledged Comprehensive Plan that complies with this goal. This proposal does not modify the City’s recreational goals and policies.

This Goal is met.

GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Finding: The implementation of HB 2306 (2019) does not apply to lands that are zoned for employment uses on Commercial, Industrial or Public lots or parcels with the primary use intended for those activities. These lands are held for employment or public improvements to further Goal 9 activities pursuant to Newberg’s Economic Opportunities Analysis. Compliance with HB 2306 (2019) and ORS 455.175 will provide additional permit streamlining and residential development pathways within the City of Newberg.

The Goal is met.

GOAL 10: HOUSING

To provide for the housing needs of citizens of the state.

Finding: Newberg’s adopted HNA dates to 2005 as an attachment updating the Population and Land Needs Projections element of the Comprehensive Plan as part of Ordinance No. 2005-2626. This document is now 21 years old. An update was prepared in 2019 but that report was only accepted by the City Council (Resolution No. 2019-3582) and not adopted. Newberg further updated the HNA in 2021 (Resolution No. 2021-3718 and Resolution No. 2021-3752) and that report has only been accepted and not adopted. The City Council has not set a date specific as to when they will adopt the 2021 HNA but is anticipated by the end of 2022 and they are aware that HB 2003 has a date set for December 31, 2024.

The proposed amendments to implement HB 2306 (2019) for early issuance of building permits for completion of substantial public improvements will, alongside other housing related initiatives and programs, create additional flexibility and streamlining opportunities in meeting housing needs, increasing housing inventory, and providing more diverse array of housing price points for current and future citizens.

The Goal is met.

GOAL 11: PUBLIC FACILITIES AND SERVICES

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Finding: The proposed amendment creates additional flexibility in building permit issuance while maintaining requirements and standards that public facilities and services will continue to be completed to the same standards as the City’s traditional permitting pathway. Through mechanisms such as verification by the City Engineer and use of bonded security agreements, the City will ensure that early issuance of building permits is allowed upon substantial completion pursuant HB 2306 (2019) while also ensuring that new developments contribute public facilities and infrastructure that is consistent with the rest of the City.

The goal is met.

GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system.

Finding: The City of Newberg has an adopted Transportation System Plan (2016) which includes the Addendum Riverfront Master Plan (2021). This Transportation System Plan has gone through the Post Acknowledgment Amendment process. The transportation system is planned to accommodate the population growth of the community for a 20-year planning period. The proposed amendments do not modify or impact the Transportation System Plan.

The Goal is met.

GOAL 13: ENERGY CONSERVATION

To conserve energy.

Finding: This Goal is not applicable as the proposed amendment does not affect or impact energy conservation.

GOAL 14: URBANIZATION

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Finding: The proposed amendment does not include or impact the expansion of an Urban Growth Boundary.

This Goal is met.

GOAL 15: WILLAMETTE RIVER GREENWAY

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Finding: The proposed amendment does not include or impact lands along the Willamette River or the Willamette River Greenway.

The Goal is met.

B. NEWBERG COMPREHENSIVE PLAN – GOALS AND POLICIES

A. CITIZEN INVOLVEMENT

GOAL: To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

Finding: The City meets this requirement by having various citizen committees and/or commissions with opportunities for the public to testify on general or specific matters. The proposed amendments are subject to the Type IV Legislative process, which requires public notification and public hearings before the Planning Commission and the City Council. This process has been established by the City and determined to be consistent with Goal I of the Oregon

Statewide Planning Goals. The public hearing notice of the action and decision, and the hearings on this case before the Planning Commission and the City Council are all recognized as opportunities for citizen participation.

The proposed amendments appear before the Newberg Planning Commission on April 13, 2023, and is scheduled to appear before Newberg City Council on April 3, 2023, which provides the opportunity for public comment. Finally, public noticing was conducted pursuant to procedures found in NMC Chapter 15.100 (Article IV. Notice, Sections 15.100.200 – 15.100.270) including the publication in the Newberg Graphic newspaper and posted in four public places.

The Goal is met.

B. LAND USE PLANNING

GOAL: To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

Finding: This Goal requires that land use decisions 1) have an adequate factual base, 2) that alternatives have been considered, and 3) that implementation measures are consistent with and adequate to carry out comprehensive plan policies and designations.

The proposed amendments have an adequate factual base and is required by HB 2306 (2109) which was later codified in ORS 455.175. The alternatives to amending the Municipal Code text would be to: 1) deny the application and rely on an administrative programmatic approach that is inconsistent with either the local Municipal Code or state law. Further, the proposed amendments are consistent with and adequate to carry out comprehensive plan policies and designations as noted in these findings.

The Goal is met.

C. AGRICULTURAL LANDS

GOAL: To provide for the orderly and efficient transition from rural to urban land uses.

Finding: Not applicable because the proposal does not propose any land use regulation changes to agricultural lands outside of the Newberg Urban Growth Boundary.

D. WOODED AREAS

GOAL: To retain and protect wooded areas.

Finding: Not applicable because the proposal does not propose any land use regulation changes to the Stream Corridor that protects wooded areas within the Newberg Urban Growth Boundary.

E. AIR, WATER, AND LAND RESOURCE QUALITY

GOAL: To maintain and, where feasible, enhance the air, water and land resource qualities within the community.

POLICY: 1. Development shall not exceed the carrying capacity of the air, water or land resource base.

Finding: Newberg has an acknowledged Comprehensive Plan that complies with this goal. Protections are already in place for air, water, and land resource quality. This proposal does not

modify the existing goals and policies. Complying with HB 2306 (2019) does not negatively impact Goal 6.

This Goal is met.

F. AREAS SUBJECT TO NATURAL HAZARDS

GOAL: To protect life and property from flooding and other natural hazards.

Finding: Newberg has an acknowledged Comprehensive Plan that complies with this goal. This proposal does not modify the City's natural hazards requirements such as flood plain or landslide areas. This proposal does not modify the existing goals and policies.

This Goal is met.

G. OPEN SPACE, SCENIC, NATURAL, HISTORIC AND RECREATIONAL RESOURCES

GOALS:

1. To ensure that adequate land shall be retained in permanent open space use and that natural, scenic and historic resources are protected.
2. To provide adequate recreational resources and opportunities for the citizens of the community and visitors.
3. To protect, conserve, enhance and maintain the Willamette River Greenway.

Finding: The proposed amendment will not negatively impact inventoried Goal 5 resources because the amendments do not change protections that already exist in the Newberg Municipal Code, Specific Plans, and Master Plans to protect these resources. Newberg has an acknowledged Stream Corridor designation, inventoried historic resources, and identified open spaces in compliance with Goal 5.

This Goal is met.

H. THE ECONOMY

GOAL: To develop a diverse and stable economic base.

POLICY: 1. General Policies.

- b. The City shall encourage economic expansion consistent with local needs.
- e. Economic expansion shall not exceed the carrying capacity of the air, water or land resource quality of the planning area.

Finding: The implementation of HB 2306 (2019) does not apply to lands that are zoned for employment uses on Commercial, Industrial or Public lots or parcels with the primary use intended for those activities. These lands are held for employment or public improvements to further Goal 9 activities pursuant to Newberg's Economic Opportunities Analysis. Compliance with HB 2306 (2019) and ORS 455.175 will provide additional permit streamlining and residential development pathways within the City of Newberg.

The Goal is met.

I. HOUSING

GOAL: To provide for diversity in the type, density and location of housing within the City to ensure there is an adequate supply of affordable housing units to meet the needs of City residents of various income levels. (Ordinance 2006-2634)

Finding: Newberg's adopted HNA dates to 2005 as an attachment updating the Population and Land Needs Projections element of the Comprehensive Plan as part of Ordinance No. 2005 -2626. This document is now 21 years old. An update was prepared in 2019 but that report was only accepted by the City Council (Resolution No. 2019-3582) and not adopted. Newberg further updated the HNA in 2021 (Resolution No. 2021-3718 and Resolution No. 2021-3752) and that report has only been accepted and not adopted. The City Council has not set a date specific as to when they will adopt the 2021 HNA but is anticipated by the end of 2022 and they are aware that HB 2003 has a date set for December 31, 2024.

The proposed amendments to implement HB 2306 (2019) for early issuance of building permits for completion of substantial public improvements will, alongside other housing related initiatives and programs, create additional flexibility and streamlining opportunities in meeting housing needs, increasing housing inventory, and providing more diverse array of housing price points for current and future citizens.

The Goal is met.

J. URBAN DESIGN

GOAL 1: To maintain and improve the natural beauty and visual character of the City.

GOAL 2: To develop and maintain the physical context needed to support the livability and unique character of Newberg.

Finding: These Goals are not applicable because the proposal does not propose any land use regulation changes to urban design policies or regulations.

K. TRANSPORTATION

GOAL 1: Establish cooperative agreements to address transportation based planning, development, operation and maintenance.

GOAL 2: Establish consistent policies which require concurrent consideration of transportation/land use system impacts.

GOAL 3: Promote reliance on multiple modes of transportation and reduce reliance on the automobile.

GOAL 4: Minimize the impact of regional traffic on the local transportation system.

GOAL 5: Maximize pedestrian, bicycle and other non-motorized travel throughout the City.

GOAL 6: Provide effective levels of non-auto oriented support facilities (e.g. bus shelters, bicycle racks, etc.).

GOAL 8: Maintain and enhance the City's image, character and quality of life.

GOAL 9: Create effective circulation and access for the local transportation system.

GOAL 10: Maintain the viability of existing rail, water and air transportation systems.

GOAL 11: Establish fair and equitable distribution of transportation improvement costs.

GOAL 12: Minimize the negative impact of a Highway 99 bypass on the Newberg community.

GOAL 13: Utilize the Yamhill County Transit Authority (YCTA) Transit Development Plan (TDP) as a Guidance Document.

GOAL 14: Coordinate with Yamhill County Transit Area.

GOAL 15: Implement Transit-Supportive Improvements.

Finding: The City of Newberg has an adopted Transportation System Plan (2016) which includes the Addendum Riverfront Master Plan (2021). This Transportation System Plan has gone through the Post Acknowledgment Amendment process. The transportation system is planned to accommodate the population growth of the community for a 20-year planning period. The proposed amendments do not modify or impact the Transportation System Plan.

These Goals are met.

L. PUBLIC FACILITIES AND SERVICES

GOAL: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban development.

POLICY: 1. All Facilities & Services Policies

e. Owners of properties which are located on unimproved streets should be encouraged to develop their streets to City standards.

h. New residential areas shall have: paved streets, curbs, pedestrian ways, water, wastewater, stormwater, street lights and underground utilities. (Ordinance No. 2018-2831, July 2, 2018)

Finding: The proposed amendment creates additional flexibility in building permit issuance while maintaining requirements and standards that public facilities and services will continue to be completed to the same standards as the City's traditional permitting pathway. Through mechanisms such as verification of by the City engineer and use of bonded security agreements, the City will ensure that early issuance of building permits is allowed upon substantial completion pursuant HB 2306 (2019) while also ensuring that new developments contribute public facilities and infrastructure that is consistent with the rest of the City.

The Goal is met.

M. ENERGY

GOAL: To conserve energy through efficient land use patterns and energy- related policies and ordinances.

Finding: This Goal is not applicable as the proposed amendment does not affect or impact energy conservation.

N. URBANIZATION

GOALS:

1. To provide for the orderly and efficient transition from rural to urban land uses.
2. To maintain Newberg's identity as a community which is separate from the Portland Metropolitan area.
3. To create a quality living environment through a balanced growth of urban and cultural activities.

Finding: The proposed amendment does not include an expansion of the Urban Growth Boundary but ensures the efficient and consistent use of the land within the existing Urban Growth Boundary for the projected population and employment opportunities within the City.

The Goal is met.

C. NEWBERG MUNICIPAL CODE

Chapter 15.100 LAND USE PROCESSES AND PROCEDURES

15.100.060 Type IV procedure – Legislative.

A. Type IV Actions Are Legislative. The planning commission shall hold a public hearing and make a recommendation to the city council. The city council shall hold another public hearing and make a final decision.

B. Legislative actions include, but are not limited to:

1. Amendments to the Newberg comprehensive plan text;
2. Amendments to the Newberg development code;
3. The creation of any land use regulation.

C. The public hearing before the planning commission shall be held in accordance with the requirements of this code. Notice of a hearing on a legislative decision need not include a mailing to property owners or posting of property (refer to NMC 15.100.200 et seq.).

D. Interested persons may present evidence and testimony relevant to the proposal. If criteria are involved, the planning commission shall make findings for each of the applicable criteria.

E. The city council shall conduct a new hearing pursuant to this code. At the public hearing, the staff shall present the report of the planning commission and may provide other pertinent information. Interested persons shall be given the opportunity to present new testimony and information relevant to the proposal that was not heard before the planning commission.

F. To the extent that a finding of fact is required, the city council shall make a finding for each of the applicable criteria and in doing so may sustain or reverse a finding of the planning commission. In granting an approval, the city council may delete, add, or modify any of the provisions in the proposal or attach certain conditions beyond those warranted for the compliance with standards if the city council determines that the conditions are necessary to fulfill the approval criteria.

G. The city council's decision shall become final upon the effective date of the ordinance or resolution.

Finding: Public hearings with the Planning Commission and the City Council will be required to finalize a decision regarding the application for the amendments to the Comprehensive Plan and Development Code.

This requirement can be met.

CONCLUSION

The proposed Development Code amendments meet the applicable requirements of state law, state rules, the Statewide Planning Goals, and the Newberg Comprehensive Plan. Therefore, the proposed Development Code amendments should be approved.